

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**MEDFORD DIVISION**

**KOGAP ENTERPRISES,  
INC.,**

Plaintiff,

No. 1:22-cv-01468-CL

v.

**ORDER**

**CITY OF MEDFORD,**

Defendant.

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AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mark Clarke. ECF No. 22. Judge Clarke recommends that Defendant’s motion to dismiss, ECF No. 9, be granted in part and denied in part.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress,

in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Although no review is required in the absence of objections, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court should review the recommendation for "clear error on the face of the record."

In this case, Plaintiff has filed Objections, ECF No. 24, and Defendant has filed a Response, ECF No. 25. The Court has reviewed the F&R and the record and finds no error. The F&R, ECF No. 22, is therefore ADOPTED and the Motion to Dismiss, ECF No. 9, is GRANTED in part and DENIED in part as set forth in the F&R. Plaintiff's Fourth and Fifth Claims for relief are dismissed without prejudice and the prayer for prejudgment interest is construed to apply to the \$150,000 bond amount only. If Plaintiff believes that any of these claims could be repleaded such that a plausible claim for relief could be sufficiently alleged, it may file a motion for leave to amend.

It is so ORDERED and DATED this 18th day of July 2023.

/s/Ann Aiken  
ANN AIKEN  
United States District Judge